

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION No. 514 of 2017**

Monday, this the 04<sup>th</sup> day of October, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 14685744N Ex Craftsman Ashish Kumar Maharia, son of Sri Manoj Kumar Maharia, Care of Sri Nilay Jain, D-209, Hall 9 IIT, Kanpur.

..... Applicant

Ld. Counsel for the : **Shri Rohit Kumar**, Advocate.  
Applicant

Versus

1. Chief of the Army Staff, DHQ PO-New Delhi.
2. Commandant cum Chief Records Officer, EME Records, Secunderabad.
3. Union of India, through Secretary, Ministry of Defence, DHQ, PO-New Delhi.

.....Respondents

Ld. Counsel for the : **Shri Sunil Sharma**,  
Respondents. Central Govt. Standing Counsel

**ORDER**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(a) To quash the rejection order of the officer in Charge EME Records Secunderabad bearing No 14685744N/TB/Court Case Cell dated 04 Aug 2017 (despite the statutory complaint preferred under Section 164 (2) of the Army Act, 1950 having been addressed to the Chief of Army Staff) with all the consequential benefits to the applicant.

(b) Quash the discharge order bearing No 21201/Est/A dated 12 Apr 2014 making the applicant struck off strength (SOS) with effect from 12 Apr 2014 THUS it was a case coming within the ambit of antedated discharge attracting Rule 18(2) of the Army Rules, 1954 with all the consequential benefits to the applicant.

(c) To issue any other order or direction considered expedient and in the interest of justice and equity.

(d) Award cost of the petition.

2. Brief facts of the case are that applicant was enrolled in the Army on 28.03.2007. During the course of service he was awarded seven (07) punishments due to various offences

including Six (06) punishments mainly on account of intoxication and overstayal of leave while serving with 164 Inf Bn TA (H&H) in a short span of two years. Applicant was attached to EME Depot Battalion vide movement order dated 27.12.2013 to proceed against him in terms of policy letter dated 28.12.1988. Proceedings to discharge him from service being undesirable soldier were initiated in accordance with preliminary inquiry conducted on 14.03.2014 and on its recommendation dated 18.03.2014 a Show Cause Notice dated 02.04.2014 was served upon applicant and on receipt of reply dated 03.04.2014, sanction of competent authority was obtained vide order dated 12.04.2014. As such, he was discharged from service w.e.f. 12.04.2014 under Rule 13 (3) III (v) of Army Rules, 1954, being undesirable soldier and service no longer required. After discharge, applicant preferred a statutory complaint dated 31.03.2016 for quashing his discharge order dated 12.04.2014. While the statutory complaint was pending, the applicant filed O.A. No. 7275 of 2016 before this Tribunal which was disposed off vide order dated 27.10.2016 with directions to competent authority to decide his statutory complaint dated 31.03.2016 within a period of two months. The statutory complaint was rejected vide order 04.08.2017. Applicant has filed this O.A. to quash his discharge order dated 12.04.2014 and order dated 04.08.2017.

3. Learned counsel for the applicant submitted that applicant was discharged from service arbitrarily without application of mind and in violation of the principles of natural justice as he was not provided any opportunity of hearing. His contention is that he was awarded punishments at short intervals which shows that the respondents had decided to oust him from service on account of more than four red ink entries. His further contention is that since Show Cause Notice was not issued by the competent authority, the whole proceedings are vitiated. His further contention is that applicant was already punished for his misconduct by awarding five red ink entries and discharge from service led to double jeopardy which ought not to have been done. He pleaded for setting aside of discharge order and reinstatement of applicant into service.

4. Per contra, submission of learned counsel for the respondents is that during a short span of two years of service with 164 Inf Bn TA (H&H), applicant was awarded five red ink and two black ink entries for offences committed and one red ink entry while serving with Station Workshop EME. He was attached with EME Depot Battalion for initiating disciplinary action where preliminary inquiry was conducted on 14.03.2014 and Show Cause Notice dated 02.04.2014 was issued. Sanction of competent authority was obtained and applicant was discharged from service as an undesirable soldier. His

contention is that since discharge process was done as per rules, this O.A. needs dismissal.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. We have observed that applicant was awarded the following punishments during a span of two years:-

Ser No	Unit	Army Act Sec/Offence	Date of Offence	Date of award	Punishment awarded	Type of Entry
(a)	Station Wksp EME, Ramgarh	(i) 39(d) (without sufficient cause failing to appear at the time fixed, at the place appointed for duty) (ii) 63 (An act prejudicial to good order and military discipline)	06 & 07 May 2011	09 May 2011	28 days RI in military custody	Red Ink
(b)	164 Inf Bn (TA)	48 (Intoxication)	06 Aug 2012	09 Aug 2012	14 days pay fine	Black Ink
(c)	-do-	48 (Intoxication)	07 Aug 2012	14 Aug 2012	05 days RI	Red Ink
(d)	-do-	39(b) (Overstayal of leave)	15 Oct 2012	18 Oct 2012	02 days pay fine	Black Ink
(e)	-do-	48 (Intoxication)	07 Jun 2013	02 Jul 2013	03 days RI	Red Ink
(f)	-do-	63 (An act prejudicial to good order and military discipline)	16 Oct 2013	30 Nov 2013	10 days RI	Red Ink
(g)	-do-	39(a) (Absent without leave)	03 Nov 2013	11 Dec 2013	14 days RI	Red Ink

7. From the aforesaid we find that applicant was awarded three punishments related to intoxication, two punishments with regard to disobeying of orders and two punishments on account of overstayal of leave which are not expected to a disciplined Indian Army soldier.

8. On having earned aforesaid punishments the applicant was attached to EME Depot Battalion. A preliminary inquiry

dated 14.03.2014 was conducted in which applicant actively participated. During recording of preliminary inquiry, the applicant was given sufficient chance to state as to what prompted him to commit one offence after another at regular intervals. The applicant had declined to state anything in his justification. Thereafter, findings and opinion of Court of Inquiry were recorded and Show Cause Notice dated 02.04.2014 was issued and after receipt of reply dated 03.04.2014 which was found unsatisfactory, proceedings to discharge him from service were initiated and he was discharged from service w.e.f. 12.04.2012 as an undesirable soldier in terms of policy letter dated 28.12.1988 and Rule 13 (3) III (v) of Army Rules, 1954.

9. A careful reading of the provisions stipulated in policy letter dated 28.12.1988 shows that the competent authority has made it abundantly clear to officers competent to direct discharge that before discharging an individual, not only should there be a Show Cause Notice but an inquiry into the allegations made against the individual concerned in which he ought to be given an opportunity of putting up his defence and that the allegations must stand substantiated for a discharge to follow. In the instant case applicant was given ample opportunity to improve himself by awarding lenient punishments. In this regard Question No. 8 and its answer of

Court of Inquiry proceedings is relevant, which for convenience sake is reproduced as under:-

*"Q8. You have been given sufficient chances to reform when you were awarded lenient punishments summarily. However the same has not brought any change in your attitude. Do you agree for the same?"*

*Ans. Yes Sir. I wholly agree for the same and take entire responsibility for my above mistakes."*

10. It is also well known that all efforts are made by Army to help a soldier to serve upto the period he earns pension and only when all efforts fail, the soldier is discharged on ground of undesirable soldier.

11. During the course of hearing, a submission was made by learned counsel for the applicant that Show Cause Notice dated 02.04.2014 was not issued by the competent authority in terms of Rule 13 (3) III (v) of Army Rules, 1954. We have perused this rule and we found that nowhere it is laid down that the Show Cause Notice should be signed by an officer of the rank of Brigadier or equivalent. In the instant case applicant has not denied that he was not punished as stated above. After considering the applicant's reply the Commandant, 1 EME Centre held that applicant is an undesirable soldier and he should be discharged from service in terms of powers conferred vide Army Rule 13 (3) III (v) read with the Army Rule 17 and Army HQ policy letter dated 28.12.1988. It is also submitted that preliminary inquiry proceedings, copy of Show Cause

Notice and brief of the case were submitted to Commandant, 1 EME Centre who after thorough perusal sanctioned applicant's discharge as an undesirable soldier. For convenience sake show cause notice and sanction of Commandant 1 EME Centre are reproduced as under:-

**"Show Cause Notice**

1. *You have been directed to this Bn by your parent unit for initiating proceedings as an undesirable soldier on disciplinary grounds.*

2. *Preliminary enquiry proceedings alongwith exhibits pertaining to your case have been received from 1 EME Centre duly sanctioned by Comdt. The Comdt had directed to initiate process for discharge/dismissal against you vide his order No 21201/Est/A dt 26 Mar 14.*

3. *You are hereby directed to state in writing as to why proceedings cannot be initiated against you for discharge/dismissal as an undesirable soldier on disciplinary grounds. Your written statement should reach this office by 07 Apr 2014."*

**"Sanction of Comdt 1 EME Centre**

*Under the provisions of Rule 13 (3) Item III (v) of Army Rule 1954, read in conjunction of Army HQ letter No A/13210/159/AG/PS2 dt 28 Dec 1988, sanction is hereby accorded to discharge No 14685744N Cfn Ashish Kumar Maharia of FRI, 164 Inf Bn (TA) (H&H) from service 'being undesirable and services no longer required'. The discharge is not due to misconduct, lack of integrity, moral turpitude or corruption."*

12. Thus, considering that due process as envisaged in policy letter dated 28.12.1988 has been followed by Army in discharging the applicant as undesirable soldier, we decline to interfere with this process or provide any other relief to the



